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IN THE
Supreme Court of the United States

OCTOBER TERM, 1957

LOCAL 850, INTERNATIONAL ASSOCIATION OF
MACHINISTS, AFL-CIO, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

PLATO E. PAPPS

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Petitioner prays that a Writ of Certiorari issue to review the decision of the United States Court of Appeals for the District of Columbia Circuit, issued May 9, 1957, affirming the National Labor Relations Board order against Petitioner.

OPINIONS BELOW

The National Labor Relations Board's opinion is reported in the Official Reports of that agency and appears at 115 NLRB 800. (Appendix A, *infra*.) The opinion of the United States Court of Appeals for the District of Columbia is not yet reported. (Appendix B, *infra*.) This case is a companion case to that of *National Labor Relations Board v. General Drivers, Chauffeurs, Warehousemen and Helpers, Local No. 886, AFL-CIO*, in which the Solicitor General filed a Petition on behalf of the National Labor Relations Board with this Court. (No. 273).

JURISDICTION

The jurisdiction of this court is invoked under 28 U.S.C. Section 1254 and under Section 10(e) of the National Labor Relations Act, as amended, 61 Stat. 447, 29 U.S.C. Section 160(e). (Appendix C, *infra*.) The judgment of the court below was entered on May 9, 1957, and its decree issued on June 7, 1957. (Appendix B, *infra*.)

QUESTIONS PRESENTED

(1) Where employees engaged in a lawful economic strike picket vehicles belonging to their employer while at the premises of common carriers who have a collective bargaining agreement with a Union which contains a "hot cargo" clause, is such picketing in violation of 8(b)(4)(A) of the National Labor Relations Act?

(2) Was the controversy rendered moot by a complete settlement of the dispute prior to the issuance of the complaint by the General Counsel of the National Labor Relations Board?

STATUTES INVOLVED

The statutory provision involved is Section 8(b) (4) (A) of the National Labor Relations Act, as amended. (61 Stat. 136, 29 U.S.C. 151 *et seq.*) (Appendix C, *infra.*)

STATEMENT

A. Facts

On September 15, 1954, the Petitioner, the bargaining representative of the production and maintenance employees of the American Iron and Machine Works Company, called a lawful strike to enforce its economic demands (R. 31).¹ During the strike it became necessary for the employer to deliver its freight to the common carriers' docks by means of its own vehicles (R. 32). The Petitioner's pickets followed the Company's vehicles which, except on one occasion, bore the identification markings of American Iron (R. 32) when deliveries were made to the docks of the common carriers² and picketed these vehicles in a "U" shaped path while they remained at those premises (R. 104). When the Company's vehicles left the premises of the common carriers the pickets also left.

General Drivers, Chauffeurs, Warehousemen and Helpers Union Local 886, AFL-CIO, hereinafter called the Teamsters, was the collective bargaining representative of the employees of the common carriers. Its contract with each of the carriers contained the following clause (R. 41-42; 140, 187):

¹ "R" references are to the Joint Appendix filed in the court below.

² Santa Fe Trail Transportation Co.; Gillette Motor Transport, Time, Inc.; D. C. Hall Transportation Co.; and Lee Way Motor Freight Lines.

ARTICLE 4

* * * * *

- (b) Members of the union shall not be allowed to handle or to haul freight to or from an unfair company, provided this is not in violation of the Labor-Management Relations Act of 1947."

Because of this clause, the Teamsters on occasions when American Iron trucks appeared at the loading platform to unload American Iron products for shipment, induced, instructed or encouraged, but did not coerce, its members employed by the carriers on the loading platforms to comply with that clause in the contract by refraining from unloading the trucks.

On September 24, 1954, American Iron filed with the Regional Director for the Sixteenth Region of the National Labor Relations Board separate unfair labor practice charges alleging that the Petitioner and the Teamsters had violated Section 8(b)(4)(A) of the National Labor Relations Act. Prior to the issuance of the complaint in those cases, the Regional Director petitioned the United States District Court for the Western District of Oklahoma for a temporary injunction enjoining both Unions from engaging in certain acts alleged to be violations of the National Labor Relations Act (Civil Case No. 6428, unreported). On October 16, 1954, after a hearing before that Court, the petition was dismissed on the grounds that the "hot cargo" clause in the Teamsters' agreement was a valid defense to the alleged violation of Section 8(b)(4)(A) of the Act by either union. Thereafter, on October 21, 1954, American Iron and the Petitioner signed a collective bargaining agreement (R. 31) thereby settling the dispute and as of that date all picketing ceased. Two days later, on October

23, 1954, the General Counsel of the National Labor Relations Board, issued complaints based on the charges filed by American Iron (R. 2-8, 11-15).

B. The Board's Conclusions and Order

The National Labor Relations Board, with two members dissenting, found that the Petitioner had violated Section 8(b)(4)(A) of the Act by picketing the vehicles of American Iron at the docks of the common carriers and by oral appeals to the employees of the common carriers to cease handling the goods of American Iron. The majority of the Board, with two members dissenting, also concluded that the Teamsters' appeals to the carriers' employees not to handle American Iron freight were violations of Section 8(b)(4)(A) of the Act, notwithstanding the "hot cargo" clause in the Teamsters' contracts with the carriers. However, four members of the Board agreed that this clause was not contrary to public policy. The two dissenting members found that neither Union had violated Section 8(b)(4)(A) of the Act because, in their view, as four of the Board's members were in agreement that the "hot cargo" clause was valid and proper under the Act, the clause necessarily constituted a defense to an appeal to the carriers' employees not to handle goods subject to the clause. They reasoned that the carriers had consented in advance to such refusal and, in any event, the handling of "struck goods" was not a part of the required duties of the employees and, accordingly, to handle these goods was not in the course of their employment.

The Petitioner moved for a reconsideration of the Board's Decision and Order on the ground that the Board did not pass or consider the Petitioner's con-

tention that the controversy was moot at a time prior to the issuance of the original complaint in this matter (R. 86-87). The Board denied Petitioner's motion (R. 86-87).

Subsequently, the Board entered an order requiring the Petitioner and the Teamsters to cease and desist from the unfair labor practices and to post appropriate notices (R. 65-67), and from that order the Petitioner appealed.

C. The Decision of the Court Below

The Court below (with one Judge dissenting on each part of the case) set aside the Board order against the Teamsters and enforced the Board's order against the Petitioner. (Appendix B, *infra*.) The Court held that the "hot cargo" clause was not violative of Section 8(b)(4)(A) and that this clause removed one of the elements essential to the finding of a violation of this Section; namely, that there could be no forcing or requiring of an employer to cease doing business with another person because the employer was only being compelled to live up to its own voluntary contract entered into in advance of the occurrence. Therefore, the Court concluded that the Teamsters' enforcement of its "hot cargo" agreements was not in violation of Section 8(b)(4)(A). However, the Court concluded that the Petitioner's conduct did violate Section 8(b)(4)(A) of the Act, and that the "hot cargo" clauses were not a defense to the Petitioner's action. The majority of the Court summarily found that the Petitioner's defenses of mootness and primary picketing activity were without merit. The dissenting Judge found that the Petitioner's activity did not violate

Section 8(b) (4) (A) of the Act because the "hot cargo" clause was a defense available to the Petitioner.

REASONS FOR GRANTING THE WRIT

1: The case at bar involves the same facts, and is dependent upon the correctness of the holding of the court below in *National Labor Relations Board v. General Drivers, Chauffeurs, Warehousemen and Helpers Union, Local No. 886, AFL-CIO*, (Case No. 273, in the Supreme Court of the United States), in which case the Solicitor General, on behalf of the Board, filed with this Honorable Court (on July 12, 1957) a Petition for a Writ of Certiorari.³ Because that case and this one are so closely intertwined and inter-related, they should be considered together. As pointed out by the Solicitor General in his petition in Case No. 273, the decision by the Court of Appeals applies equally to the Teamsters and the Petitioner. These cases were originally consolidated by the General Counsel and the Board at the time the consolidated complaint issued and were heard as a single case before the Board and the Court below. A similar procedure was followed in the proceedings conducted before the United States District Court for the Western District of Oklahoma in regards the same subject matter (*Elliott v. General Drivers, Chauffeurs, Warehousemen and Helpers Union, Local No. 886, AFL-CIO, and Local 850, International Association of*

³ A Petition for a Writ of Certiorari has also been filed in *Local 1976, United Brotherhood of Carpenters and Joiners of America, A.F.L.; Los Angeles County District Council of Carpenters; Nathan Fleisher v. National Labor Relations Board*, 241 F. 2d 147 (C.A. 9) (Case No. 127) which case also involves a "hot cargo" clause. The National Labor Relations Board by Memorandum dated July 1, 1957 did not oppose the granting of this petition.

Machinists, AFL-CIO, Civil Case No. 6428). The Petitioner has consistently maintained before all the reviewing authorities below that the "hot cargo" clause of the Teamsters' agreement with the common carriers prevented the Petitioner's notice to the Teamsters Union and its members that "hot cargo" was present at the carriers' docks from forming the basis for a charge of violation of Section 8(b)(4)(A) of the Act. District Judge Wallace agreed, as did Circuit Judge Washington.

Inasmuch as this case and Case No. 273 involve the same question of the validity of the Teamsters "hot cargo" clause, it is desirable that this Court review and dispose of this case along with Case No. 273.

2. This case concerns important legal questions involving the construction and application of an important section of the National Labor Relations Act (8(b)(4)(A)). There has been a conflict in the interpretation of this section between various federal courts and the Board. For example, the holding of the court below was that the "hot cargo" clause was valid and enforceable by the Teamsters, yet it was not available as a defense to the alleged unfair labor practice of the Petitioner because Petitioner was neither a contracting party nor a third party beneficiary to the Teamster agreement containing the "hot cargo" clause. The dissenting Judge in the case at bar, however, held that the Petitioner had not violated Section 8(b)(4)(A) for the reason that what was being induced was not a "strike or refusal to work" with an object of "forcing" or "requiring" an employer to cease doing business with another person within the meaning of Section 8(b)(4)(A) and that the operative effect of the employer's consent was the same, regardless of

who it was that reminded the secondary employees of the terms of their contract and sought to induce compliance with it. The same conclusion was reached by Judge Wallace in the United States District Court for the Western District of Oklahoma (Civil Case No. 6428) when the Board's Regional Director applied for a temporary injunction on October 16, 1954; also *Madden v. Local 442, International Brotherhood of Teamsters*, 114 F. Supp. 932 (D. C. Wise.). The latter two cases involved proceedings under Section 10(1) of the National Labor Relations Act. See also *Rabouin, d/b/a Conway's Express v. National Labor Relations Board*, 195 F. 2d 906 (C.A. 2) and *Milk Drivers and Dairy Employees Local Union No. 338 v. National Labor Relations Board*, decided June 19, 1957 (unofficially reported at 40 LRRM 2279).

In order to resolve the conflict between the Board and the various courts which have considered this problem, it would appear appropriate for this Court to grant a review of the case at bar.

3. As a matter of law, the decision of the court below is in error. The decision below rests on the premise that the Petitioner was neither a contracting party nor a third party beneficiary to the collective bargaining agreement containing the "hot cargo" clause. Assuming *arguendo* that this holding is correct, the court below in the *Teamster* case found that the essential elements necessary to a finding of a violation of Section 8(b)(4)(A) were not present; i.e., there was no strike or refusal to work, and there was no forcing or requiring an employer to cease doing business with another person, because the employer was only compelled to live up to his own voluntary contract entered

into in advance of the happening. See, *Milk Drivers and Dairy Employees Local Union No. 338 v. National Labor Relations Board*, decided June 19, 1957, 40 LRRM 2279, *Rabouin, a/b/a Conway's Express v. National Relations Board*, 195 F. 2d 906 (C. A. 2) and the dissenting opinion of Judge Washington in the case at bar. Accordingly, if the presence of a "hot cargo" clause removes the elements necessary to the finding of a violation of Section 8(b)(4)(A) as to the Teamsters, we submit that the Court erred in not finding that the Petitioner was likewise insulated from a finding of a violation of 8(b)(4)(A) of the Act.

4. The Court erred in not finding the case was rendered moot. The underlying dispute between the parties was completely resolved two days prior to the issuance of the Board's complaint and five days after a petition for a temporary injunction had been denied. *Local 74, United Brotherhood of Carpenters and Joiners, AFL, et al v. National Labor Relations Board*, 341 U.S. 707; *United States v. W. T. Grant Company et al*, 345 U.S. 629; *Milgram et al v. Lowe's, Inc., et al*, 192 F. 2d 579.

5. The Court also erred in not finding that the Petitioner's picketing was primary under the standards established in *Matter of Sailor's Union of the Pacific, AFL*, 92 NLRB 547; *Sales Drivers et al v. National Labor Relations Board*, 229 F. 2d 514, and in not finding that the appeals to the employees of the secondary employers were not in violation of Section 8(b)(4)(A) of the Act, since they were not "inducements" or "encouragements" within the meaning of that Section. *National Labor Relations Board v. Rice Milling Company, Inc; et al*. 341 U.S. 665.

CONCLUSION

For the reasons stated, this Petition for Certiorari should be granted.

Respectfully submitted.

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July, 1957

APPENDIX

APPENDIX "A"

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 16-CC-47

Case No. 16-CC-48

Decision and Order¹

On March 18, 1955 Trial Examiner Sidney L. Feiler issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices alleged in the complaint and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that Respondents had not engaged in certain other alleged unfair labor practices and recommended that the complaint be dismissed as to them. Thereafter, the Respondents filed exceptions to the Intermediate Report with supporting briefs.

• The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, insofar as they are consistent with this Decision and Order.

1. We find, as did the Trial Examiner, that Respondent Teamsters by its inducement of employees of the common carriers (secondary employers) to engage in a concerted refusal in the course of their employment to handle freight brought by American Iron (the primary employer) to the carriers' docks, with an object of forcing or requiring the

¹ The AEL and CIO having merged subsequent to the hearing in this proceeding, we are amending the identification of the affiliation of the unions accordingly.

carriers to cease doing business with American Iron violated Section 8 (b) (4) (A) of the Act.

Like the Trial Examiner, we reject the contention of Teamsters that its conduct was excused by the "hot cargo" clause in the Teamsters' contracts with the common carriers. This clause provided that members of Teamsters "shall not be allowed to handle or haul freight to or from an unfair company." However, in rejecting this defense, we do not rely, as did the Trial Examiner, on the McAllister case,² but rather on more recent Board decision in the Sand Door case,³ which was decided after the issuance of the Intermediate Report in the case at bar. As stated in the principal opinion in that case, regardless of the existence of a "hot cargo" clause, any direct appeal to employees by a union to engage in a strike or concerted refusal to handle a product is proscribed by the Act when one of the objectives set forth in Section 8 (b) (4) (A) is present. Thus, while Section 8 (b) (4) (A) does not forbid the execution of a hot cargo clause or a union's enforcement thereof by appeals to the employer to honor his contract, the Act does, in our opinion, preclude enforcement of such clause by appeals to employees, and this is so whether or not the employer acquiesces in the union's demand that the employees refuse to handle "hot" goods. Accordingly, in affirming the Trial Examiner, we do not find it necessary to rely as he did, on the fact that the secondary employers herein did not acquiesce in the refusal of their employees to handle American Iron's freight. In our view, it is sufficient that there was direct inducement of such employees by Teamsters not to handle such freight, with an object of forcing the secondary employers to cease dealing with American Iron.

² McAllister Transfer, Inc., 110 NLRB 1769.

³ Sand Door and Plywood Co., 113 NLRB No. 123. Members Murdock and Peterson dissented.

2. Like the Trial Examiner, we find also that Respondent Machinists violated Section 8 (b) (4) (A) of the Act (a) by picketing American Iron trucks at the docks of the neutral common carriers while the trucks were attempting to deliver American Iron freight to the carriers,⁴ and (b) the oral appeals of Machinists' agents to the employees of the carriers not to handle American Iron freight at the carrier's docks; all with the object of forcing the carriers to cease dealing with American Iron.⁵

ORDER

Upon the entire record in this case and pursuant to Section 10 (c) of the National Labor Relations Board, as amended, the National Labor Relations Board hereby orders that the Respondents, General Drivers, Chauffeurs, Warehousemen and Helpers Union, Local No. 886, AFL-CIO and Local 850, International Association of Machinists, AFL-CIO, and their officers, representatives, agents, successors and assigns, shall:

1. Cease and desist from inducing or encouraging the employees of Gillette Motor Transport, Inc., D. C. Hall Transport, Inc., Santa Fe Trails Transportation Company, Time, Inc. and Lee Way Motor Freight Lines, or any other employer, to engage in a strike or concerted refusal in the course of their employment to work on or handle freight consigned to or received from American Iron and Machine Works Company, or any other employer, where an object thereof is to force or to require any employer or

⁴ We find that this picketing was unlawful, not only because of the availability of the primary employer's premises for that purpose, but also because the pickets failed to disclose that their dispute was only with the primary employer. See *Moore Dry Dock Company*, 92 NLRB 547.

⁵ As we have found that the hot cargo clause in the Teamsters contracts with the carriers is not available as a defense to the Teamsters, it necessarily follows that such clause is likewise not available to the Machinists.

person to cease doing business with American Iron and Machine Works Company.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Post at their respective business offices in Oklahoma City, Oklahoma, copies of the notice attached to the Intermediate Report as Appendix A.⁶ Copies of said notice, to be furnished by the Regional Director for the Sixteenth Region, after being duly signed by official representative of the Respondents, shall be posted by the Respondents immediately upon receipt thereof, and maintained by them for a period of sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members of the Respondents are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material. The Respondents shall also sign copies of the notice, which the Regional Director shall submit for posting at the Oklahoma City premises of Gillette Motor Transport, Inc., D. C. Hall Transport, Inc., Santa Fe Trails Transportation Company, and Time, Inc. said employers being willing. The Respondent Machinists shall also sign a copy of the notice for posting at Lee Way Motor Freight Lines;

(b) Notify the Regional Director for the Sixteenth Region in writing within ten (10) days from the date of this Order what steps the Respondents have taken to comply herewith.

⁶ This notice shall be amended by substituting for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER," in the caption thereof, the words "A DECISION AND ORDER." In the event that this Order is enforced by decree of a United States Court of Appeals, there shall be substituted for the words "PURSUANT TO A DECISION AND ORDER" the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

It is further Ordered that the complaint be dismissed insofar as it alleges that the Respondent Teamsters violated Section 8 (b) (4) (A) of the Act by activities at Lee Way Motor Freight Lines, and that the Respondents violated Section 8 (b) (1) (A) of the Act.

Dated, at Washington, D. C. March 15, 1956.

BOYD LEEDOM

Boyd Leedom, *Chairman*

PHILIP RAY RODGERS

Philip Ray Rodgers, *Member*

STEPHEN S. BEAN

Stephen S. Bean, *Member*

(SEAL)

NATIONAL LABOR RELATIONS BOARD

PHILIP RAY RODGERS, MEMBER, concurring:

I concur in the result reached by Chairman Leedom and Member Bean only because I am convinced that "hot cargo" clauses are contrary to public policy and cannot, therefore, serve as a defense to a complaint charging a violation of Section 8 (b) (4) (A) of the Act. I have stated before, and now reiterate, that Section 8 (b) (4) (A) was specifically intended by Congress to safeguard the public interest, i.e., "in order adequately to protect the public welfare which is inextricably involved in labor disputes." A "hot cargo" provision, as I see it, is a device to immunize in advance the very conduct which Congress, in response to a dire public need, sought effectively to eliminate. I therefore feel that we cannot, in the light of our mandate from Congress, permit this device to preclude what would otherwise require the finding of an unfair labor practice under the statute.

Dated, Washington, D. C. March 15, 1956.

PHILIP RAY RODGERS

Philip Ray Rodgers, *Member*

NATIONAL LABOR RELATIONS BOARD

ABE MURDOCK and IVAR H. PETERSON, MEMBERS, *dissenting*:

In this case a majority of the present Board completes a reversal of a principle of Board law⁷ that has been affirmed in each United States circuit⁸ and district court⁹ in which the issue has been raised. Indeed, as the Trial Examiner found, the General Counsel's request for a preliminary injunction pending the Board's decision in this very case was refused by the United States District Court for the Western District of Oklahoma on the ground that the neutral employers involved had granted their employees permission by contract to refuse to handle freight from the American Iron and Machine Works Company, an employer engaged in a labor dispute with the Respondent Machinists. The majority, however, ignoring and disregarding the decision of these courts, finds that the Respondents Teamsters and Machinists have violated Section 8 (b) (4) (A) despite the fact that the conduct of these Unions did not extend beyond inducement of employees not to handle freight from an unfair company, work which their employers and the Teamsters had agreed by a lawful¹⁰ contract that employees would not be "allowed" to perform. We do not believe that the logic and force of considered judicial decisions which reaffirm the correctness of the Board's initial interpretation of the Act in Conway's Express should be so cavalierly ignored.

⁷ Conway's Express, 87 NLRB 972; Pittsburgh Plate Glass Company, 105 NLRB 740.

⁸ Rabouin d/b/a Conway's Express, 195 F. 2d 906 (C.A. 2).

⁹ Madden v. Local 442, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, 114 F. Supp. 932 (D.C. Wisc.); N.L.R.B. v. Lodge 850, AFL's Machinists and Local 886, AFL's Teamsters, U.S. D.C. E.D. Okla., October 16, 1954.

¹⁰ The majority decision finds that "Section 8 (b) (4) (A) does not forbid the execution of a hot cargo clause."

"The McAllister case"¹¹ was the first to intrude upon the theretofore well-established Conway's Express doctrine. In the latter case the Board, affirmed by the Court of Appeals for the Second Circuit, held that an employer could lawfully agree in advance that its employees would not be required to handle freight from any employer involved in a labor dispute and that the invocation of such a contractual clause by a Union was not proscribed by Section 8 (b) (4) (A). The Board said:

It is evident from these facts that the three secondary employers, in effect, consented in advance to boycott Conway's. As they consented, their employees' failure to deliver freight to or accept freight from Conway trucks was not in the literal sense a "strike" or "refusal" to work, nor was any such concerted insubordination contemplated by the Respondent when it caused the employees to exercise their contractual privilege.

Expressly upholding the validity of the union's conduct in that case, the Court of Appeals held:

The union cannot have committed an unfair labor practice under this section in regard to those employers who refused to handle Rabouin's shipments under the terms of the area agreement provision relating to cargo shipped by struck employers. Consent in advance to honor a hot cargo clause is not the product of the union's "forcing or requiring any employer . . . to cease doing business with any other person."

In McAllister, Chairman Farmer, whose vote was necessary to the majority decision, stated that he was "loathe to disturb" the Company's principle since it had court approval. However, he distinguished the two cases on the ground that in McAllister, unlike Conway's the secondary employers had posted notices specifically directing their employees to handle hot cargo notwithstanding their

¹¹ McAllister Transfer, Inc., 110 NLRB 1769.

contractual agreement to the contrary. This distinction, the validity of which we questioned in our dissenting opinion in *McAllister*, was apparently abandoned by the Board majority in the *Sand Door and Plywood* case¹² where Chairman Farmer and Member Leedom held, on the one hand, that employers could "agree in advance" to boycott another employer by executing a hot cargo clause but, on the other hand, that such an agreement was not defense to an appeal by the union to employees not to handle goods subject to the agreement. We can only read this decision as meaning that an agreement is not an agreement whenever the actual facts contemplated by the agreement arise. If this logic prevails in the field of labor relations, then parties to collective bargaining agreements can never provide for the peaceful settlement of future disputes nor can either rely upon the solemnly pledged word of the other in a lawful existing contract.

The rationale of the *Sand Door and Plywood* case is, according to the majority, the sole basis for its decision in the instant case. The majority finds that Section 8 (b) (4) (A) "does not forbid the execution of a hot cargo clause or a union's enforcement thereof by appeals to the employer to honor his contract." Notwithstanding this finding, the majority then concludes that a union may not seek enforcement of the clause by appeals to employees "whether or not the employer acquiesces in the union's demand that the employees refuse to handle the 'hot goods.'" The inconsistency of these findings is so apparent that they must, in our opinion, fall of their own weight. What good is a contract that deprives one of the parties of a benefit derived through collective bargaining unless the other party unilaterally decides to "honor his contract" rather than to breach it? Indeed, the language of this decision is so broad that even if an employer reaffirms his adherence to an existing contract the union

¹² *Sand Door and Plywood Co.*, 113 NLRB No. 123.

may not, under penalty of violating Section 8 (b) (4) (A), notify its members that the contract applies. From the majority's decision it would seem that officials of the Teamsters may not so much as discuss a hot cargo clause at a membership meeting for this may be construed by the majority as an inducement of employees to engage in a strike for an object proscribed by Section 8 (b) (4) (A). Carried further, the majority's decision may also be taken to mean that the union cannot send copies of a contract, containing a hot cargo clause, to its members on whose behalf the contract was signed for this conduct may similarly be construed as an inducement of employees to read and therefore rely upon their contractual rights. Such a result, in our opinion, reduces the majority's position to an absurdity.

For these reasons and for the reasons expressed in our dissenting opinions in *McAllister* and *Sand Door and Plywood* so far as they are applicable here, we would dismiss this complaint in its entirety both with regard to the Teamsters and the Machinists. Although the latter union was not a party to the contract, this circumstance is irrelevant in determining whether employees have been induced by the Machinists to engage in a strike or concerted to work within the meaning of Section 8 (b) (4) (A). If the failure of employees to handle hot goods is not considered a strike or concerted refusal in the course of their employment to handle the goods of another employer because it is excluded from the scope of their employment by contract, it would seem to follow that the inducement of them not to handle such goods, whether or not such inducement is by the union which is a party to the "hot cargo" agreement, is not violative of Section 8 (b) (4) (A). In other words, as the parties to the contract have by contract excluded the handling of "hot goods" from the required duties of the employees covered by the contract, the inducement of the employees by a union not a party to the contract not to do something that they are not re-

quired to do and which indeed is outside the scope of their employment would appear to be no more a violation of the Act than would such inducement by their own union. As a matter of fact in this case it seems clear that the parties to the contract intended to exclude the handling of hot cargo from the employees' scope of employment for the "hot cargo" clause provides that,

Members of the Union shall not be allowed to handle or haul freight to or from an unfair company, . . . (Emphasis supplied.)

This language may be construed as constituting the refusal to handle hot cargo as of a duty than a privilege. That is, it expressly prohibits such activity and therefore may be considered as imposing a duty upon the employees not to handle hot cargo. How can it be held that another union that requested the employees covered by such a contract not to do that which they are prohibited by contract from doing, thereby has violated the law?

Dated, Washington, D. C., March 15, 1956.

ABE MURDOCK, *Member*

IVAR H. PETERSON, *Member*

NATIONAL LABOR RELATIONS BOARD

APPENDIX "B"

I. Opinion of Court of Appeals

UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

No. 13394

GENERAL DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS
UNION, Local No. 886, AFL-CIO, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

No. 13406

LOCAL 850, INTERNATIONAL ASSOCIATION OF MACHINISTS,
AFL-CIO, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

ON PETITIONS TO REVIEW AND SET ASIDE, AND ON REQUEST FOR
ENFORCEMENT OF, AN ORDER OF THE NATIONAL LABOR RE-
LATIONS BOARD

Decided May 9, 1957

Before PRETTYMAN, WASHINGTON and BASTIAN, Circuit

Judges

BASTIAN, Circuit Judge: These cases involve the issue
as to whether or not the so-called "hot cargo" clause¹

¹ The "hot cargo" clause in question reads: "(a) The Union and the Employer agree that it shall not constitute a breach of this Agreement for any employee or Union member covered herein to refuse to cross a picket line or to refuse to enter upon the premises of an Employer if such refusal does not constitute a violation of the Labor Management Relations Act of 1947. (b) Members of the Union shall not be allowed to handle or haul freight to or from an unfair company, provided, this is not a violation of the Labor Management Relations Act of 1947."

in a labor contract, wherein an employer agrees that his employees shall not be required to handle struck goods, is enforceable by the union party thereto, and whether it (the hot cargo clause) may be used as an excuse by a union on strike to conduct secondary picketing.

The facts found by the Trial Examiner and the majority of the National Labor Relations Board are substantially as follows:

Local 850, International Association of Machinists (hereinafter called Machinists) became involved in an economic strike with the American Iron & Machine Works Company (hereinafter called American Iron) in September 1954. The strike lasted a little over a month, terminating upon the execution of a new collective bargaining agreement. During the course of the strike the Machinists picketed the three plants of their employer. They also picketed trucks of American Iron when they appeared at the loading platforms of certain carriers. Representatives of General Drivers, Chauffeurs, Warehousemen and Helpers Union, Local 886 (hereinafter called Teamsters) instructed the unloading personnel of the carriers that, under the terms of the hot cargo clause of the contract between Teamsters and the carriers, the employees were not to handle American Iron goods since they were struck goods. Certain of the carriers, despite the hot cargo clause, requested their employees to handle American Iron goods, whereupon Teamsters urged its members employed by those carriers to refuse to handle these goods. One carrier-employer took no action and did not request his employees to unload.

On charges filed by American Iron, the National Labor Relations Board (hereinafter called the Board) issued complaints, filed two days after the new contract between American Iron and Teamsters was signed, against both Teamsters and Machinists by reason of the alleged violation of Section 8 (b) (4) (A) of the National Labor Rela-

tions Act, as amended.² A temporary injunction applied for by the Board was denied by the United States District Court for the Western District of Oklahoma.

The complaints of the Board were referred to a Trial Examiner and, after a preliminary report and consideration of the exceptions thereto, the Board, by a majority vote, two of the five members dissenting, directed that Machinists and Teamsters cease and desist from inducing or encouraging the employees of the carriers, or any other employer, to engage in a strike or concerted refusal in the course of their employment to work on or handle freight consigned to or received from American Iron, or any other employer where an object thereof was to force or require any employer or person to cease doing business with American Iron. Two of the three members of the majority of the Board were of opinion that the hot cargo clause was valid; the third member, concurring in the result of the Board's order, was of opinion that the clause was illegal and did violence to Section 8 (b) (4) (A). The Board members comprising the majority held in effect that, even assuming that the Act itself does not prohibit the execution of a "hot cargo" clause, nevertheless, the Act does preclude enforcement of such a clause by appeals to employees.³

² 61 Stat. 141 (1947): "(b) It shall be an unfair labor practice for a labor organization or its agents * * * (4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person * * *"

³ The exact language of the Board's ruling is as follows: "* * * any direct appeal to employees by a union to engage in a

From the order of the Board, Teamsters and Machinists filed these petitions asking this court to review and set aside the order; and, in its answer to the petitions, the Board requested that its order be enforced.

I

Appeal in No. 13,394

PETITION OF GENERAL DRIVERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS UNION, LOCAL NO. 886

We agree with the four members of the Board who held that the hot cargo clause of the contract was not violative of the provisions of Section 8 (b) (4) (A) of the Act. This seems also to have been held by the Second Circuit in the so-called Conway case.⁴ The majority of

strike or concerted refusal to handle a product is proscribed by the Act when one of the objectives set forth in Section 8 (b) (4) (A) is present. Thus, while Section 8 (b) (4) (A) does not forbid the execution of a hot cargo clause or a union's enforcement thereof by appeals to the employer to honor his contract, the Act does, in our opinion, preclude enforcement of such clause by appeals to employees, and this is so whether or not the employer acquiesces in the union's demand that the employees refuse to handle 'hot' goods. Accordingly, in affirming the Trial Examiner, we do not find it necessary to rely as he did, on the fact that the secondary employers herein did not acquiesce in the refusal of their employees to handle American Iron's freight. In our view, it is sufficient that there was direct inducement of such employees by Teamsters not to handle such freight, with an object of forcing the secondary employers to cease dealing with American Iron."

⁴ *Rabouin v. National Labor Relations Board*, 195 F. 2d 906, 912 (2d Cir. 1952). There the court said: "The union cannot have committed an unfair labor practice under this section in regard to those employers who refused to handle Rabouin's shipments under the terms of the area agreement provision relating to cargo shipped by struck employers. Consent in advance to honor a hot cargo clause is not the product of the union's 'forcing or requiring any employer * * * to cease doing business with any other person.' § 8 (b) (4) (A)." See also *Meier & Pohlmann Furniture Co. v. Gibbons*, 233 F. 2d 296 (8th Cir. 1956); 113 F. Supp. 409 (1953); *Madden v. Local 442, etc.*, 114 F. Supp. 932 (W. D. Wis. 1953).

The Board held, following *Sand Door & Plywood Co.*, 113 N. L. R. B. No. 123, that any direct appeal to employees by a union to engage in a strike or concerted refusal to handle a product is proscribed by the Act when one of the objectives set forth in Section 8 (b) (4) (A) is present. See note 3, *supra*.

With this we disagree. If the hot cargo clause is not violative of Section 8 (b) (4) (A), and we think it is not, such a ruling would in practical effect render nugatory the clause itself and would leave the employees without adequate remedy. The Board urges that Section 8 (b) (4) (A) was enacted for the benefit of the public. We think that, although the public is involved, this section has for its purpose the protection of those persons who might be subjected to a secondary boycott, which is proscribed by the section.

We are not impressed with the argument that other adequate remedies are open to the employees of the union. Such remedies as are suggested by the Board seem to us to be totally inadequate and not such as are contemplated by the agreement by the employer in the hot cargo clause.

Here the Teamster's conduct only consisted of urging the employees of the carriers not to handle freight from a company which they considered unfair. This was exactly what the carriers had agreed their employees would not be required to do. If an employer may lawfully agree that its employees will not be required to handle freight from a struck company, and such a situation arises, it is hard to see how it can be said that, simply because the employees do what they have the right to do, there was a strike or refusal to work. Nor can it be said that there was a "forcing" or requiring of an employer to cease doing business with another person, because the employer was only being compelled to live up to its own voluntary contract entered into in advance of the happening.

It cannot be argued that the actions of Teamsters constituted a sympathy strike or an illegal boycott. The actions taken might have been so regarded had there been no hot cargo clause. In sympathy strikes or illegal boycotts the employers are innocent victims of disputes with which they are not concerned. But where such a clause exists a different situation arises. The secondary employer has consented, knowingly and in advance, to the refusal of its employees to handle goods of the original employer.

It seems to us that the purpose of Section 8 (b) (4) (A) is to prevent injury to secondary employers in the disputes of others in which the secondary employers are not involved, and to prevent the forcing of such employers to stop doing business with a third person. But, in cases like this one, the secondary employer has agreed, as part of its bargaining contract with its own union, not to handle goods of an unfair employer; and it would seem that Teamsters employed the only effective means in its power to enforce the agreement.

I am authorized to state that Circuit Judge Washington agrees with the foregoing treatment of No. 13394. He is filing an additional statement.

Circuit Judge Prettyman dissents for reasons which he will state separately.

The Board's order as to Teamsters will be set aside.

II

Appeal in No. 13406

PETITION OF LOCAL 850, INTERNATIONAL ASSOCIATION OF MACHINISTS

Machinists urge a number of objections to the Board's findings and order. Among them is that the Board erred in not holding that Teamster's conduct was protected activity and, accordingly, Machinists' conduct in bringing

the dispute to the knowledge of the members of the Teamsters' Union was not in violation of Section 8 (b) (4) (A).

Machinists were not parties to the contract between the carriers and Teamsters. But they contend that, since Teamsters and the carriers were parties to a contract containing the hot cargo clause, an essential element to a finding of violation of the Act is missing. Their position is that the handling of American Iron freight (struck goods) by the employees of the carriers was taken out of the scope of their employment by the hot cargo clause and, therefore, Machinists could induce carrier employees to exercise their contract right not to handle struck goods. Machinists urge that, since Teamsters were free to honor Machinists' ambulatory picket line, their activity would not constitute encouragement or inducement of Teamsters to engage in a concerted refusal in the course of their employment to handle the goods of another employer.

We agree with the Trial Examiner and the Board majority that the conduct of Machinists must be evaluated independently of that of Teamsters and that the defenses available to Teamsters are not automatically available to Machinists. The latter are neither parties nor third party beneficiaries of the Teamsters-carrier contract.

The Trial Examiner and the Board majority found that after picketing of American Iron trucks began, while the trucks were on the premises of the carriers, dock employees of at least some of the carriers continued to handle American Iron products. Indeed, in some instances there were protests when supervisory employees attempted to move merchandise which would ordinarily be moved by the dock employees who were members of Teamsters. The Board found further that in most instances the dock employees continued to handle American Iron freight until instructed by representatives of their union not to do so.

Here, as above stated, Machinists had no connection with the contract containing the hot cargo clause and Team-

sters' contract could not constitute the basis for a defense by Machinists.

We have examined the other contentions of Machinists, among them that the Board erred in not finding that the controversy was moot because the complaint was filed after the strike between Machinists and American Iron had been settled by execution of a new contract. A reading of the Act would indicate that a complaint may be filed where the party charged "has engaged in or is engaging" in unfair labor practices. There can be no doubt that orders dealing with unfair labor practices have preventive as well as remedial effects.

Machinists also contend that their picketing at the carriers' premises was legitimate primary activity aimed only at American Iron employees. This contention is foreclosed by the fact that the findings of the Board were based upon disputed facts; and there is substantial evidence to sustain the findings of the Board.

Circuit Judge Prettyman concurs in the result in No. 13,406 but for different reasons, which reasons he will state in a separate opinion.

Circuit Judge Washington, dissents for reasons which he will state separately.

Order of Board in No. 13394 set aside.

Order of Board in No. 13406 affirmed.

PRETTYMAN, Circuit Judge, dissenting in part and concurring in part: I dissent from Judge Bastian's opinion and proposed judgment in No. 13394, relating to the Teamsters. In a nutshell my view is that the hot cargo clause cannot be enforced by a strike, because such a strike or refusal to work is flatly forbidden by Section 8 (b) (4) (A) of the Act.

A strike is a concerted refusal by employees to do work the employer wants done. This is the purport of the opin-

ions on the point.⁵ A refusal to work is likewise a declination directed at the employer. So, if an employer and his employees agree that certain work shall not be done, and it is therefore not done, there is no "strike" or "refusal to work". Section 8 (b) (4) (A) forbids only "a strike or a concerted refusal in the course of their employment".

It follows from the foregoing that, if an employer and his employees agree by contract that the employees need not handle certain goods, and both abide by their agreement, there is no "strike" or "refusal to work." But, if an employer, having entered into such a contract, thereafter refuses to abide by his agreement and directs his employees to handle the goods, and his employees refuse to do so, there is a strike or refusal to work. Such a strike or refusal to work, where an object is to force the employer to cease transporting the products of another producer, is forbidden by the statute.

It may be that the right vouchsafed the employer by Section 8 (b) (4) (A) cannot be nullified by contract. Section 7 rights cannot be contracted away.⁶ And it can be argued that when Congress meant Section 8 rights to be subject to contract it said so, as it did in Section 8 (a) (3). But I need not reach that question, and, since the answer, one way or the other, involves such sweeping considerations, I do not undertake it. On the other hand it may be that the hot cargo clause is a valid contract agreement between the carriers and their employees and may validly be carried out by both parties. But even so, when a carrier refuses to comply with the contract, even though he is thereby violating the agreement, the Team-

⁵ See Restatement, Torts, § 797 (1939), and the many cases collected under "Strike" in *Words and Phrases*, especially in the pocket supplement.

⁶ *Nat. Licorice Co. v. Labor Board*, 309 U. S. 350, 84 L. Ed. 799, 60 S. Ct. 569 (1940). See also *Bethlehem Steel Company*, 89 N. L. R. B. 341 (1950).

sters, his employees, may not strike or refuse to work in order to prevent the handling of the struck goods. I think the employees may not violate the statute in order to enforce their agreement with the carrier.⁷

The sum of it is that Section 8 situations can legally be avoided, by contract or otherwise. Employers and employees need not so conduct themselves as to give rise to Section 8 prohibitions. But the terms of the statute cannot be nullified, by contract or otherwise. And so employers and employees cannot agree that even if a situation covered by the statute does occur the statute shall not apply.

I do not agree with the argument that the hot cargo clause has the effect of removing struck goods from "the course of their [the Teamsters'] employment." If such a construction could be placed upon the phrase in Section 8 (b) (4) (A), careful contract draftsmanship could legalize without qualification any otherwise prohibited activity, e. g., the jurisdictional strike, the sympathy strike, and the wildcat strike, by artificially exempting the work involved from the course of the employment governed by the contract. I think the statute cannot thus be nullified.⁸ One of the carriers involved here adhered to its agree-

⁷ Strong evidence of the public interest in the problem is afforded by the fact that the motor carrier which honors a hot cargo clause thereby violates duties owed the public, breaches other contracts, and may well be in violation of another public law, Part II of the Interstate Commerce Act, 49 Stat. 543 (1935), as amended, 49 U. S. C. A. § 301 *et seq.* See the *Examiner's Decision in Galveston Truck Line Corp. v. ADA Motor Lines*, I. C. C. No. MC-C-1922 (April 1957), which involves actions of our appellant Teamsters, Local No. 886, and cooperating motor carriers.

⁸ The Board's rejection of this argument on another ground, *Sand Door & Plywood Co.*, 113 N. L. R. B. 1210, 1217 (1955), was cited with approval by the Sixth Circuit in *National Labor Relations Board v. Local 11, United Brotherhood of Carpenters, Etc.*, *et al.*, — F. 2d — (1957).

ment and would not request its employees to handle the goods. Its employees did not strike. So in that particular case I would not affirm the cease and desist order. As to all the other carriers I would affirm as to the Teamsters.⁹

I concur in Judge Bastian's proposed judgment in No. 13406, relating to the Machinists. I also agree with his opinion in that regard, except that I add, since, as I have pointed out I think the hot cargo clause could not be enforced by a strike, that it could not have been so enforced by the Machinists even if they had been parties to the contract.

WASHINGTON, *Circuit Judge*, concurring in Judge Bastian's opinion in No. 13394, and dissenting from the latter's opinion in No. 13406:

In the *General Drivers* case, I think Judge Bastian is correct in his treatment of the "hot cargo" clause and its effect. That clause is bargained for, and must be presumed to be balanced by concessions which the employer has obtained at the bargaining table.⁶ To say that the employer is free in his discretion to recognize or ignore the clause, when a concrete problem comes up, seems to me to encourage lawlessness in industrial relations. Once a valid contract has been made—and contracts such as this have been recognized as valid by the Board and the Second Circuit—both sides are entitled to rely on the prompt and faithful execution of its provisions. I therefore agree that efforts by the Teamsters to induce their own members to abide by the terms of the "hot cargo" clause embodied in their collective bargaining agreement are not violative of Section 8(b)(4)(A).

⁹ In *National Labor Relations Board v. Local 1976, United Brotherhood of Carpenters, Etc., et al.*, 241 F. 2d 147, (1957), the Ninth Circuit reached the result suggested in this dissent. See also *National Labor Relations Board v. Local 11, United Brotherhood of Carpenters, Etc., et al.*, — F. 2d — (6th Cir. 1957).

The same reasoning impels me to the conclusion (in No. 13406) that the efforts of the Machinists, directed toward the same end, are similarly outside the scope of the statutory proscription. It is true that the Machinists are not a party to the contract which contains the "hot cargo" clause, and not a third-party beneficiary of it. But this does not mean that the existence of the clause has no effect on the lawfulness of the Machinists' conduct. The clause is evidence of the advance consent of the trucking companies that their employees are to refrain from handling struck goods. Because the employers have given this consent and because no basis appears in the statute for permitting this consent to be revoked on an ad hoc basis, the efforts of the contracting union (the Teamsters) to induce employees of the trucking companies to comply with the clause are upheld. The reasoning must be that what is being induced is not a "strike or refusal to work" with an object of "forcing" or "requiring" an employer to cease doing business with another person within the meaning of Section 8 (b) (4) (A). This being so, I cannot agree that what is being induced is within the meaning of the statute when the inducing is done by the primary employees, the Machinists. The operative effect of the employer's consent is, in my view, the same, regardless of who it is that reminds the secondary employees of the terms of their contract, and seeks to induce compliance with it.

2. *Judgment Below*

United States Court of Appeals for the District of
Columbia Circuit

April Term, 1957

No. 13394

GENERAL DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS UNION, LOCAL NO. 886, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 13406

April Term, 1957

LOCAL 850, INTERNATIONAL ASSOCIATION OF MACHINISTS,
AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petitions to Review and Set Aside, and on Request for
Enforcement of, an Order of the National Labor Rela-
tions Board

Before: PRETTYMAN, WASHINGTON AND BASTIAN,
Circuit Judges

Judgment

These cases came on to be heard on the record from
the National Labor Relations Board, and were argued by
counsel.

On consideration whereof, It is ordered and decreed
by this Court that the order of the National Labor
Relations Board on review in these cases be, and it
is hereby, set aside so far as it applies to General
Drivers, Chauffeurs, Warehousemen, and Helpers Union,
Local No. 886, and that it be, and it is hereby, affirmed so

far as it applies to Local 850, International Association of Machinists.

Pursuant to Rule 38 (1) the respondent shall within 10 days hereof serve and file a proposed enforcement decree in case No. 13406.

Dated: May 9, 1957.

Per Circuit Judge BASTIAN.

Separate opinion by Circuit Judge Prettyman dissenting with respect to case No. 13394 and concurring as to case No. 13406.

Separate opinion by Circuit Judge Washington concurring as to case No. 13394 and dissenting as to case No. 13406.

3. Decree Below

United States Court of Appeals for the District of
Columbia Circuit

No. 13394

GENERAL DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS UNION, LOCAL NO. 886, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 13406

LOCAL 850, INTERNATIONAL ASSOCIATION OF
MACHINISTS, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

DECREE ENFORCING IN PART AND DENYING IN PART AN
ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Before: PRETTYMAN, WASHINGTON AND BASTIAN,
Circuit Judges.

This cause came on to heard upon the petitions of General Drivers, Chauffeurs, Warehousemen and Helpers Union, Local No. 886, AFL-CIO (hereinafter called Teamsters) and Local 850, International Association of Machinists, AFL-CIO (hereinafter called Machinists) to review and set aside an order of the National Labor Relations Board dated March 15, 1956. The Court heard argument of respective counsel on January 11, 1957, and has considered the briefs and the transcript of record filed in this cause. On May 9, 1957, the Court being fully advised in the premises handed down its decision granting enforcement of the Board's order as to the Machinists, but denying enforcement against the Teamsters. In conformity therewith, it is hereby

Ordered, adjudged and decreed by the Court that Local 850, International Association of Machinists, AFL-CIO, and its officers, representatives, agents, successors and assigns, shall:

1. Cease and desist from inducing or encouraging the employees of Gillette Motor Transport, Inc., D. C. Hall Transport, Inc., Santa Fe Trails Transportation Company, Time, Inc., and Lee Way Motor Freight Lines, or any other employer, to engage in a strike or concerted refusal in the course of their employment to work on or handle freight consigned to or received from American Iron and Machine Works Company, or any other employer, where an object thereof is to force or to require any employer or person to cease doing business with American Iron and Machine Works Company.

2. Take the following affirmative action, which the Board has found will effectuate the policies of the National Labor Relations Act, as amended (hereinafter called the Act):

(a) Post at its business offices in Oklahoma City, Oklahoma, copies of the notice attached hereto as Appendix A. Copies of said notice, to be furnished by the Regional Director for the Sixteenth Region of the National Labor Relations Board, Fort Worth, Texas, after being duly signed by an official representative of the Machinists, shall be posted by the Machinists immediately upon receipt thereof, and maintained by it for a period of sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members of the Machinists are customarily posted. Reasonable steps shall be taken by the Machinists to insure that said notices are not altered, defaced or covered by any other material. The Machinists shall also sign copies of the notice, which the Regional Director shall submit for posting at the Oklahoma City premises of Gillette Motor Transport, Inc., D. C. Hall Transport, Inc., Santa Fe Trails Transportation Com-

pany, and Time, Inc., said employers being willing. The Machinists shall also sign a copy of the notice for posting at Lee Way Motor Freight Lines;

(b) Notify the aforesaid Regional Director in writing within ten (10) days from the date of this Decree what steps the Machinists have taken to comply herewith.

It is further hereby ordered, adjudged and decreed that those portions of the Board's order applicable to General Drivers, Chauffeurs, Warehousemen and Helpers Union, Local No. 886, AFL-CIO be and it hereby is set aside.

Dated: June 7, 1957.

(S) E. BARRETT PRETTYMAN,
*Judge, United States Court of Appeals
for the District of Columbia Circuit.*

(S) GEORGE T. WASHINGTON,
*Judge, United States Court of Appeals
for the District of Columbia Circuit.*

(S) WALTER M. BASTIAN,
*Judge, United States Court of Appeals
for the District of Columbia Circuit.*

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to a Decree of the United States Court of Appeals for the District of Columbia Circuit, enforcing an order of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby give notice that:

We will not induce and encourage the employees of any employer other than American Iron and Machine Works Company to engage in a strike or concerted refusal in the course of their employment to perform services for their employer, where an object thereof

is to force or require any employer or person to cease doing business with American Iron and Machine Works Company.

LOCAL 856; INTERNATIONAL ASSOCIATION

OF MACHINISTS, AFL-CIO.

(Labor Organization)

By

(Representative)

(Title)

Dated

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX "C"

STATUTES INVOLVED

Judicial Code

28 USC 1 et seq.

28 USC 1254. Court of Appeals; Certiorari; Appeal; Certified Questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree . . . Act of June 25, 1948, C. 646, 62 Stat. 928.

National Labor Relations Act

29 USC 158—UNFAIR LABOR PRACTICES.

(b) It shall be an unfair labor practice for a labor organization or its agents . . .

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a con-

certed refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; . . . ”

29 USC 160 (c)—PREVENTION OF UNFAIR LABOR PRACTICES—
POWERS OF BOARD GENERALLY.

(c) Petition to court for enforcement of order; proceedings; review of judgment.

The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the United States court of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit of district, respectively, wherein the unfair labor practice in question occurred or wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings, and order of the Board. Upon such filing the court shall cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth

in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. . . . The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28. (Act June 7, 1934, c. 426, 48 Stat. 926; July 5, 1935, c. 372, § 10, 49 Stat. 453; June 25, 1936, c. 804, 49 Stat. 1921; June 23, 1947, c. 120, Title I, § 101, 61 Stat. 146; June 25, 1948, c. 648, § 32, 62 Stat. 991).

